



**US Army Corps  
of Engineers®**  
New England District

696 Virginia Road  
Concord, MA 01742-2751

# PUBLIC NOTICE

**Date:** October 17, 2005

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## **REISSUANCE OF THE DEPARTMENT OF THE ARMY MAINE PROGRAMMATIC GENERAL PERMIT (PGP)**

The New England District, U.S. Army Corps of Engineers, 696 Virginia Road, Concord, Massachusetts 01742-2751 hereby announces the reissuance of the statewide Maine Programmatic General Permit (PGP), pursuant to 33 CFR Part 325.5(c)(3), for minimal-impact activities within the State of Maine. The existing PGP expired on September 29, 2005. The reissued Maine PGP continues the expedited review process for activities in Corps jurisdiction under Section 404 of the Clean Water Act, Section 10 of the Rivers and Harbors Act of 1899 and Section 103 of the Marine Protection, Research, and Sanctuaries Act. This public notice is issued in accordance with 33 CFR 325.10 to ensure potential applicants for permits are informed of the requirements of 33 CFR 320-330 and of the steps required to obtain permits for activities in waters of the U.S. or ocean waters.

General permits are encouraged under the President's plan to streamline state and Federal regulatory programs. The New England District has already had success with streamlining these programs through the use of general permits throughout New England. This PGP is designed to authorize activities formerly covered under the Nationwide Permit (NWP) program and the prior PGP that expired on September 29, 2005. This reissued PGP became effective on September 29, 2005. Continued utilization of the general permit process in place of the NWPs will provide important benefits to the public, including simplifying the process, expediting decisions, and providing necessary environmental protection.

Projects with minimal individual and cumulative effects on the aquatic environment will be approved administratively under this PGP. Projects that do not meet the terms and conditions of this PGP, of which General Condition 3 requires projects authorized by the PGP to have minimal individual and cumulative adverse environmental impacts, will be subjected to Individual Permit review. The Individual Permit review procedures are not altered by the PGP. Federal exemptions, which are not necessarily the same as the State of Maine's exemptions, are also not altered by the PGP. In addition, for projects authorized pursuant to this PGP, project proponents must obtain the appropriate or State approvals when required in order for this PGP authorization to be valid.

All PGP authorizations will be subject to the applicability requirements, procedures, and conditions contained in the PGP document. Project eligibility under this PGP will fall into two categories: non-reporting projects (Category 1) and reporting projects requiring screening (Category 2). The Corps and the Federal resource agencies (U.S. Fish and Wildlife Service, U.S. Environmental Protection Agency and National Marine Fisheries Service) will review Category 2 activities as described in the PGP. Through interagency screening, the Corps will determine if the individual and cumulative adverse environmental impacts are minimal and whether the project may proceed under the PGP.

The new PGP supercedes the previous PGP but does not affect activities authorized under the previous PGP that have commenced prior to the expiration date of the previous PGP. An authorized activity which has commenced (i.e., is under construction or is under contract to commence) prior to the expiration date of the previous PGP (September 29, 2005), in reliance upon the terms and conditions of the category under which it was authorized, shall remain authorized provided the activity is completed by September 29, 2006.

You can view the Maine PGP on our web site at <http://www.nae.usace.army.mil>. Please go to "Regulatory/Permitting", "Programmatic General Permits" and then "Maine". Major changes to the PGP are detailed on sheets enclosed with this Public Notice. Please contact Mr. Penta at (978) 318-8862 or [gregory.r.penta@usace.army.mil](mailto:gregory.r.penta@usace.army.mil) for more information or a copy of the PGP.

  
for Christine Godfrey  
Chief, Regulatory Division

Enclosure

## 1. GENERAL CHANGES:

### Page 2, Eligibility Criteria.

It's stated that project proponents seeking Category 1 authorizations are not relieved of the obligation to comply with this PGP's General Conditions (see Page 7) and other Federal laws such as the National Historic Preservation Act, the Endangered Species Act (ESA) and the Wild and Scenic Rivers Act. Therefore, consultation with the Corps and/or outside experts such as the Maine Historic Preservation Commission and the appropriate Indian tribes is recommended when there is a high likelihood of the presence of resources of concern.

It's clearly stated that, "Work that is not regulated by the State of Maine, but is subject to Corps jurisdiction, is eligible for Corps authorization under this PGP in accordance with the review thresholds and conditions contained herein. The Maine DEP and LURC have waived WQC for projects authorized under Categories 1 and 2 of this PGP and not subject to jurisdiction under the NRPA and LURC Land Use Districts and Standards."

Page 3, Application Procedures. These procedures and the state documents that applicants may submit in lieu of a Corps application form were clarified. Information typically required was rewritten, and a section was added for information typically required for dredge projects.

Page 4, Federal Screening Procedures. These procedures were clarified and detailed.

Page 6, Emergency Situations Procedures. These are now provided

## 2. GENERAL PERMIT CONDITIONS:

General Condition 1. Other Permits. The need for proponents to obtain a Flood Hazard Development Permit issued by the town, if necessary, is mentioned. A phone number and website are provided.

General Condition 2. Federal Jurisdictional Boundaries. References and websites detailing the procedures used to determine boundaries are provided.

General Condition 3. Minimal Effects. These italicized words were added for clarity, "Projects authorized by this PGP shall have *no more than* minimal individual and cumulative adverse environmental impacts as determined by the Corps".

General Condition 5. Single and Complete Projects. Language from the NWP's pertaining to single and complete projects was added. General Condition 5 now states, "All components of a single project shall be treated together as constituting one single and complete project and/or all planned phases of a multi-phased project, unless the Corps determines that a component has independent utility". Independent utility is defined.

General Condition 6. Permit On-Site. This condition requires and provides instructions for keeping a copy of the PGP and the accompanying authorization letter at the work site

General Condition 8. Historic Properties. The procedures for coordinating with the tribes during the application process were removed and placed in the Application Procedures section.

General Condition 9. National Lands. National Marine Sanctuary and National Park were added to the list of activities authorized by the National Park Service that shall not be impinged upon in order to be authorized under the PGP.

General Condition 11. Essential Fish Habitat. This condition was rewritten for clarity and provided here is the list of waterways containing Atlantic salmon that were previously listed in Appendix A.

General Condition 16. Minimization. It is now stated that permittees may only fill those jurisdictional wetlands that the Corps authorizes to be filled and impact those wetlands that the Corps authorizes as secondary impacts. For coastal structures such as piers and docks, the height above the marsh at all points should be equal to or exceed the width of the deck.

General Condition 17. Heavy Equipment in Wetlands. The title of this condition was changed from Work in Wetlands. It was modified to allow equipment in wetlands that have low ground pressure (<3 psi) as the resulting impacts are typically minimal. “*Swamp or timber*” was added before “mats” for clarification. This italicized wording was added as removing equipment daily could cause more damage in some instances, “Heavy equipment...shall not be stored, maintained or repaired in wetlands, *unless it is less environmentally damaging otherwise...*” The GC 18 was referenced and swamp and timber mats, and corduroy roads were defined.

General Condition 18. Temporary Fill. We now consider swamp and timber mats as fill in accordance with the Corps new definition of fill material in the May 9, 2002 Federal Register. Accordingly, this now states, “Swamp or timber mats (see 16 above) are considered as temporary fill when they are removed immediately upon work completion”. Other requirements regarding temporary fill were added.

General Condition 19. Restoration. This condition was added. Most of its requirements that were previously scattered throughout the PGP’s other conditions were updated.

General Condition 20. Coastal Bank Stabilization. This condition was added. It requires the design of coastal structures to minimize environmental effects, including effects to neighboring properties, scour, etc. to the maximum extent practicable.

General Condition 22. Waterway Crossings. Paragraphs (b) – (g) were inserted. Paragraph (b) prohibits any activity from substantially disrupting the necessary life-cycle movements of aquatic species indigenous to the waterbody, including species that migrate through the area. Open bottom arches, bridge spans or embedded culverts should be installed when practicable for new permanent crossings. Culverts shall be installed with their inverts embedded below existing streambed grade to avoid “hanging” and impediments to fish passage. The web reference of “Design of Road Culverts for Fish Passage,” which provides design guidance, is provided. Paragraph (c) requires culverts installed at waterbody crossings to preserve hydraulic connectivity, at its present level, between the wetlands on either side of the road. Paragraph (d) requires culverts and bridges to span the waterway a minimum of 1.2 times the bankfull width in probable fish bearing waterways to qualify as a Category 1 non-reporting activity. Paragraph (e) prohibits projects using slip lining (retrofitting an existing culvert by inserting a smaller diameter pipe), plastic pipes and High Density Polyethylene Pipes (HDPP) for authorization under Category 1. Paragraph (f) requires waterbody crossings to be culverted to at least municipal or State standards. The reference to Maine DEP’s stream crossing standards are provided. Paragraph (g) states that waterway crossings proposed by the Maine DOT should conform to the MDOT Fish Passage Policy and Design Guides.

General Condition 24. Spawning Areas. Added these italicized words “Discharges of dredged or fill material and/or suspended sediment producing activities in fish and shellfish spawning or nursery areas and amphibian and waterfowl breeding areas during spawning or breeding seasons shall be avoided.

General Condition 25. Storage of Seasonal Structures. Add the following italicized words, “Coastal structures, such as pier sections and floats, that are removed from the waterway for a portion of the year (*often referred to as seasonal structures*) shall be stored in an upland location located above mean high water (MHW) and not in tidal wetlands. *These seasonal structures may be stored on the fixed, pile-supported portion of the structure that is seaward of MHW. This is intended to prevent structures from being stored on the marsh substrate and the substrate seaward of MHW. Seasonal storage of structures in navigable waters, e.g., in a protected cove on a mooring, requires Corps and local harbor master approval.*

General Condition 30. Work Start Notification Form and Compliance Certification. Category 1 and 2 permittees are now required to submit a 1) Work Start Notification Form (WSNF) two weeks before work commencement, and 2) signed Compliance Certification Form within one month following the completion of the authorized work and any required mitigation.

General Condition 31. Maintenance. This was modified for clarity, to more accurately reflect various provisions in our regulations. It is stated that maintenance dredging includes only those areas and depths previously authorized and dredged.

General Condition 38. Duration of Authorization. Activities authorized under Category 2 of this PGP will now remain authorized in accordance with the project-specific date that the Corps provides to the permittee in the PGP authorization letter.

### **3. CONTACTS FOR PROGRAMMATIC GENERAL PERMIT:**

The contact list beginning on Page 16 was modified to add related websites and e-mail addresses. The websites for some of these contacts can be found on our website at <http://www.nae.usace.army.mil>. Please go to “Regulatory/ Permitting” and then click “Useful Links.”

### **4. APPENDIX A - DEFINITION OF CATEGORIES**

I. Inland Waters and Wetlands. The definition was modified to more accurately state Corps jurisdiction and the areas we review under the Inland Waters and Wetlands section.

I. Inland Waters and Wetlands, (a) New Fill/Excavation Discharges, Categories 1, 2 and Individual Permit. Secondary impact areas now include *excavated* areas, in addition to the “drained, flooded, or cleared” areas. This agrees with the NWP’s. The term “Impact area” was changed to “Fill area” for clarification.

I. Inland Waters and Wetlands, (a) New Fill/Excavation Discharges, Categories 1 and 2  
Swamp mats are now counted towards the overall square footage of impacts when determining whether a project qualifies for Category 1 or 2. Swamp mats filling any area  $\geq 4,300$  SF are reviewed in Category 2, and will not necessitate Individual Permit (IP) review unless the project’s other impacts total greater than 1 acre or the Corps determines the impacts are greater than minimal.

#### I. Inland Waters and Wetlands, (a) New Fill/Excavation Discharges, Category 1

This category now lists the following qualifiers and exclusions:

“Provided:

- In-stream (e.g., rivers, streams, brooks, etc.) work limited to Jul 15 - Oct 1
- In-stream work of up to 4,300 SF of fill below OHW in waterways not designated as EFH for Atlantic salmon (see GC 11, Page 9) and performed in accordance with Maine Permit By Rule standards or a LURC permit.
- Waterway crossings shall comply with GC 22.
- Projects covered by a DEP Tier One permit with no cumulative impacts >15,000 SF in inland wetlands from previous permits, unauthorized work, and/or other state permits.
- Subdivision fill complies with GC 5, Single and Complete Projects. See Page 7.”

“This category excludes:

- Non-State approved sediment releases/sluices from dams.
- Open trench excavation in flowing waters (see GC 22, Page 12).
- Work in waters designated as EFH for Atlantic salmon (see GC 11, Page 9), unless the waterway is crossed with a span and footprints of the span abutments are outside ordinary high water with no more than 4,300 SF of associated wetland impact.
- Work in Special Inland Waters or Wetlands<sup>3</sup> (vernal pools).
- Work in special aquatic sites (SAS)<sup>4</sup> other than wetlands.
- Work within ¼ mile of a Wild and Scenic River (see GC 12, Page 9).
- Work on National Lands (See GC 9, Pg. 9.).
- Work affecting threatened or endangered species (see GC 10, Page 9) or EFH salmon migration (see GC 11, Page 9).”

#### I. Inland Waters and Wetlands, (a) New Fill/Excavation Discharges, Category 2

1. The proactive restoration wording was changed to clarify what we consider as proactive restoration: “Projects with proactive restoration as a primary purpose with impacts of any area  $\geq 4,300$  SF. The Corps, in consultation with State & Federal agencies, must determine that net adverse effects are not more than minimal.”

2. Similar to NWP 38, we added the following to streamline hazardous waste remediation project review by avoiding IP’s: “Specific activities with impacts of any area  $\geq 4,300$  SF required to affect the containment, stabilization, or removal of hazardous or toxic waste materials that are performed, ordered, or sponsored by a government agency with established legal or regulatory authority. Wetlands must be restored in place.”

#### I. Inland Waters and Wetlands, (b) Bank Stabilization, Category 1

The threshold for bank stabilization projects was changed from 500 feet to 100 feet. The following qualifiers are now listed:

Provided:

- No work in special inland waters & wetlands<sup>3</sup> and SAS<sup>4</sup>.
- No open trench excavation in flowing waters (see GC 22, Page 12).
- No structures angled steeper than 3H:1V allowed. Only rough-faced stone or fiber roll revetments allowed.
- No work affects threatened or endangered species (see GC 10, Page 9) or EFH salmon migration (see GC 11, Page 9).

I. Inland Waters and Wetlands, (c) Repair and Maintenance of Authorized Fills, Category 1 and II. Navigable Waters, (b) Repair and Maintenance Work, Category 1.

1. Section I now states, “\*Conditions of the original authorization apply, however minor deviations in fill design allowed<sup>11</sup>”. Section II states, “Conditions of the original authorization apply. Must be rebuilt in same footprint, however minor deviations in structure design allowed<sup>6</sup>”.

2. Endnote 6 was added, which is similar to NWP 3. This was added as encouraging proponents to build coastal engineering structures in the same footprint can discourage the reduction of the adverse impacts of the structure, made possible through technology and better understanding of coastal processes: “<sup>6</sup> Minor deviations in the structure’s configuration or filled area, including those due to changes in materials, construction techniques, or current construction codes or safety standards, which are necessary to make repair, rehabilitation, or replacement are permitted, provided the adverse environmental effects resulting from such repair, rehabilitation, or replacement are minimal. No seaward expansion for bulkheads or any other fill activity is considered Category 1 maintenance. Currently serviceable means useable as is or with some maintenance, but not so degraded as to essentially require reconstruction.”

II. Navigable Waters. The definition was modified to more accurately state Corps jurisdiction and the areas that are reviewed under the Navigable Waters section.

II. Navigable Waters, (a) Fill, Category 1.

Wording similar to that in NWP 15 was added. This will reduce the regulatory burden on the public associated with applying to two agencies.

“Discharges of dredged or fill material incidental to the construction of bridges across navigable waters of the United States, including cofferdams, abutments, foundation seals, piers, and temporary construction and access fills, provided the U.S. Coast Guard authorizes such discharges as part of the bridge permit. Causeways and approach fills are not included in this category and require Category 2 or Individual Permit authorization”.

II. Navigable Waters, (a) Fill, Category 2.

1. This previously stated, “Temporary tidal marsh impacts up to 1 acre.” It now states, “Temporary fill or excavation <1 acre in special aquatic sites (SAS)<sup>4</sup>.”

2. This previously stated, “Permanent tidal marsh, mudflat, or vegetated shallows<sup>1</sup> fill up to 1,000 sf.” It now states, “Permanent fill or excavation <1,000 SF in SAS<sup>4</sup>.”

3. The proactive restoration wording was changed to clarify what we consider as proactive restoration: “Permanent fill and/or excavation  $\geq$  1,000 SF in SAS<sup>5</sup> when associated with a project with proactive restoration as a primary purpose. The Corps, in consultation with Federal & state agencies, must determine that net adverse effects are not more than minimal.”

4. Similar to NWP 38, this now states, “Specific activities with impacts of any area required to affect the containment, stabilization, or removal of hazardous or toxic waste materials that are performed, ordered, or sponsored by a government agency with established legal or regulatory authority. Wetlands must be restored in place.”

#### II. Navigable Waters, (c) Dredging, Category 1

It was clarified that dredging is for navigational purposes only. The following provisions were added:

- No dredging in intertidal areas.
- No work affects threatened or endangered species (see GC 10, Page 9) or EFH salmon migration (see GC 11, Page 9).

#### II. Navigable Waters, (c) Dredging, Category 2

The following provision was added: “No impacts to special aquatic sites<sup>4</sup>.” Beach nourishment of any amount if sand is from an upland source is now allowed, and it was clarified that confined aquatic disposal is allowed in Category 2.

#### II. Navigable Waters, (d) Moorings, Category 2

It was clarified that:

- Moorings associated with a boating facility<sup>7</sup>.
- Moorings that don’t meet the terms in Category 1 and don’t require an Individual Permit.
- Moorings located such that they, and/or vessels docked or moored at them, are within the buffer zone of the horizontal limits<sup>10</sup> of a Corps Federal Channel. (See Appendix B.) The buffer zone is equal to three times the authorized depth of that channel.

#### II. Navigable Waters, (e) Pile-Supported Structures and Floats, Category 1

It was clarified that, “No work affects threatened or endangered species (see GC 10, Page 9) or EFH salmon migration (see GC 11, Page 9).”

#### II. Navigable Waters, (e) Pile-Supported Structures and Floats, Category 2

This previously stated, “Private piers and floats for navigational access to waterway (seasonal and permanent).” It now states, “Private structures or floats, including floatways/skidways, built to access waterway (seasonal and permanent).”

It was added that compliance with the following is recommended, but not required:

- Pile-supported structures <400 SF, with attached floats totaling ≤200 SF.
- Bottom anchored floats ≤200 SF.
- Structures are ≤4’ wide and have at least a 1:1 height:width ratio<sup>11</sup>.
- Floats supported above the substrate during all tides.
- Structures & floats not located within 25’ of any vegetated shallows<sup>8</sup>.
- Moored vessels not positioned over SAS<sup>4</sup>.
- No structure located within 25’ of the riparian property boundary.
- No structure extends across >25% of the waterway width at mean low water.
- Not located within the buffer zone of the horizontal limits<sup>10</sup> of a Corps Federal Navigation Project (FNP) (See App. B). The buffer zone is equal to three times the authorized depth of that FNP.

#### II. Navigable Waters, (f) Miscellaneous, Category 1

Delete these words, “Coast Guard-approved aids to navigation” and add the following, “The placement of aids to navigation and regulatory markers which are approved by and installed in accordance with the requirements of the U.S. Coast Guard. (See 33 CFR part 66, Chapter I, subchapter C).”



This previously stated, “Fish/wildlife harvesting structures/fill (as defined by 33 CFR 330, App. A-4).” It now states, “Fish/wildlife harvesting devices such as pound nets, crab traps, eel pots, lobster traps, duck blinds, and clam and oyster digging (as defined by 33 CFR 330.5 (a)(4)).”

## II. Navigable Waters, (f) Miscellaneous, Category 2

This previously stated, “Shellfish/finfish (other than Atlantic salmon), or other aquaculture facilities which are consistent with the Corps revised standard siting requirements and standard permit conditions dated 7/6/94, or as revised.” It now states “Shellfish/finfish (other than Atlantic salmon), or other aquaculture facilities with no more than minimal individual and cumulative impacts to environmental resources or navigation. A 25’ eelgrass set back is recommended. Aquaculture guidelines are provided at: [www.maine.gov/dmr/aquaculture/index.htm](http://www.maine.gov/dmr/aquaculture/index.htm).”

The footnotes were rewritten and organized.